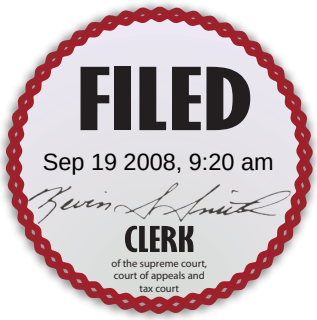


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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| CHRISTOPHER YOUNG, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 48A02-0802-CR-156 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0602-FC-59

**September 19, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## Case Summary

Christopher Young ("Young") appeals his conviction and sentence for Operating a Motor Vehicle While Privileges are Forfeited for Life, a Class C felony.[1] We affirm.

## Issues

Young raises four issues on appeal, which we reorder and restate as follows:

I. Whether the trial court abused its discretion by removing a prospective juror;

II. Whether Young waived any challenge to the trial court's exclusion of certain testimony by not making an offer of proof;

III. Whether Young waived any challenge to the State's closing argument by not making a contemporaneous objection; and

IV. Whether Young's sentence is inappropriate.

## Facts and Procedural History

After midnight, Anderson Police Department Officer Brandon Grant ("Officer Grant") observed a car traveling with its headlights off. He stopped the car and found Young in the driver's seat. After Young said that he had a driver's license but that he did not have his wallet, Officer Grant determined that Young had lost his driving privileges for life. Young explained that the passenger, John Newby ("Newby"), had been driving them to work when Newby became ill and then vomited at a gas station. Young said that he, rather than Newby, drove from the gas station because he was taking Newby to the hospital. Young was arrested. Given the choice of driving or being sent to the hospital by ambulance, Newby drove away because he did not want to have his car impounded.

The State charged Young with Operating a Motor Vehicle While Privileges are Forfeited for Life, and a jury found him guilty as charged. The trial court imposed a five-year term of imprisonment, to be fully executed. Young now appeals.

## Discussion and Decision

### I. Removal of Juror

Young argues that the trial court abused its discretion by removing a prospective juror. The trial court has broad discretion to remove a prospective juror from a panel. Riggs v. State, 809 N.E.2d 322, 327 (Ind. 2004). We reverse only for an abuse of discretion. Id.

During voir dire, one juror stated that she had lived in France and Italy for ten years and that "they have wonderful public transportation there." Transcript at 149. She responded to the State's questions as follows:

> A: [H]ere, my husband on his job he has to drive men sometimes around that have their licenses taken away due to various things so I have a very tender spot for people like that here because I feel that we don't have a good system of public transportation.
>
> Q: If you're selected to be a juror, will you be speculating and saying the reason why a defendant may have committed a crime is because there's no public transportation?
>
> A: No. If a person has committed a crime, say they've been drunk and driving and or they've hurt people while they're driving, uh, that's a different issue, but I . . . I . . . it depends on what their crime is I guess.
>
> Q: Let me put it this way, for example, there are certain rules of evidence that say you're not entitled to know someone's criminal history because that doesn't matter, all you have to do is follow the law. If the law says someone is not supposed to drive for the rest of their lives . . .

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[1] Ind. Code § 9-30-10-17.

A: Right.

Q: . . . you just have to make a determination about whether or not they drove.

A: Right. Yeah.

Q: Would you have difficulty doing that?

A: Um, I'd really want to know why.

Q: You'd really want to know the history.

A: Yeah. Yeah. Because, you know, I feel that here in the U.S. you can't eat, you can't have a home if you can't drive because you need a car here. I mean, you really can't function. I mean, it's just very difficult.

Q: . . . . You'd be asking about things that would not be in evidence.

A: Right. Yeah.

. . .

A: I'd really want to know why. I mean, were they, I mean, was it like drunken driving or was it they're just maybe not very good drivers and, you know . . .

Q: Okay.

A: You know. A few traffic tickets. That sort (indiscernible).

Id. at 149-51. Later questioned by Young, she stated that she could be fair and impartial. After a bench conference, the trial court removed this prospective juror from the venire.

In a criminal trial, there are certain enumerated criteria for challenging any person called as a prospective juror. Ind. Code § 35-37-1-5. The parties disagree as to which of those criteria applied here. The transcript does not reveal the parties' argument before the trial court. On appeal, Young argues within the context of the good-cause criterion, that is,

whether "the person has formed or expressed an opinion as to the guilt or innocence of the defendant." I.C. § 35-37-1-5(a)(2). To the contrary, when questioned by Young, the prospective juror indicated that she could be fair and impartial. The State argues that the relevant good-cause criterion was that "the person is biased or prejudiced for or against the defendant." I.C. § 35-37-1-5(a)(11). We agree that this provision controls.

The prospective juror stated plainly that she had a "very tender spot" for people whose driving privileges had been revoked, stated repeatedly that she would want to know why the privileges had been revoked, and confirmed that she would have difficulty acting as a juror without evidence regarding why Young's driving privileges had been revoked. A fair inference was that she would be biased in favor of Young. The trial court did not abuse its discretion in excusing the prospective juror.

II. Exclusion of Testimony

Young next argues that the trial court abused its discretion by precluding him from testifying as to medical conclusions. We review rulings on the admission of evidence for an abuse of discretion. McHenry v. State, 820 N.E.2d 124, 128 (Ind. 2005). However, where a trial court excludes evidence, the party offering the evidence must make an offer of proof. Ind. Evidence Rule 103(a)(2). Without an offer of proof, the issue is waived. West v. State, 755 N.E.2d 173, 184 (Ind. 2001).

On direct examination, Young testified that Newby was not in any condition to drive. This testimony was admitted over the State's objection. The trial court then ruled that Young could testify regarding his observations, but not as a medical expert. Young's attorney

responded repeatedly, "Okay" and said, "very good judge." Transcript at 261. Young's attorney concluded his questioning on this point as follows:

> Q: And, and you are not a medical expert as the judge just said?
>
> A: No.
>
> Q: And you were just going by what you saw or witnessed in [Newby's] behavior.
>
> A: Yes.

Id. at 261-62.

Young's observations were not excluded from the jury's consideration; rather, the trial court admonished counsel that Young had not been qualified to render a medical diagnosis or to testify concerning the life-threatening nature of the condition.[2] Counsel did not challenge these rulings with an offer of proof. Accordingly, these issues are waived.

## III. Prosecutor Misconduct

Young also argues that the State, during its closing argument, "misstated the law." Appellant's Brief at 17. Again, however, he failed to preserve the issue for appellate review by failing to make a contemporaneous objection. See Bald v. State, 766 N.E.2d 1170, 1172-73 (Ind. 2002) (declining to analyze merits of claim of prosecutorial misconduct where criminal defendant made no contemporaneous objection to State's closing argument).

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[2] We take exception to the trial court's admonishment that Mayes could not testify "if it's life threatening." Transcript at 261. The statute stated plainly that Mayes had the burden of proving that "the operation of a motor vehicle was necessary to save life or limb in an extreme emergency." Ind. Code § 9-30-10-18. "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" Kubsch v. State, 784 N.E.2d 905, 923-24 (Ind. 2003) (quoting Crane v. Kentucky, U.S. 476 U.S. 683, 690 (1986)).

## IV. Appropriateness of Sentence

Finally, Young asks this Court to revise his five-year sentence. Under Indiana Appellate Rule 7(B), this "Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B); see IND. CONST. art. VII, § 6. A defendant "'must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007).

As to the nature of the offense, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Childress, 848 N.E.2d at 1081. For a Class C felony, the minimum, advisory, and maximum terms of imprisonment are respectively two years, four years, and eight years. Ind. Code § 35-50-2-6(a). Despite having forever lost his driving privileges in Indiana, Young chose to drive. While he stated that he was taking his passenger to the hospital, he could have called 9-1-1 from the gas station. When initially asked for his driver's license, Young lied to the police. Furthermore, he was driving after midnight without headlights.

Regarding his character, Young has an extensive criminal history. Excluding convictions related to drinking and driving, Young has five convictions for battery-related offenses, two for resisting law enforcement, and one each for residential entry, intimidation,

and disorderly conduct. At the time of sentencing, Young had pending five other charges arising from three arrests. Finally, when Young failed to appear for sentencing on June 20, 2006, the trial court issued a warrant for his arrest. Young then failed to appear for hearings in March and April 2007. The warrant was finally served on October 16, 2007. Young's sentence is not inappropriate.

**Conclusion**

The trial court did not abuse its discretion in removing a prospective juror from the venire. Young waived any challenge to the trial court's exclusion of his testimony and to the State's closing argument. His sentence is not inappropriate.

Affirmed.

RILEY, J., and BRADFORD, J., concur.